

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

Matthew Thomas Pickens, Jr.,  
a/k/a Matthew T. Pickens,

Plaintiff,

v.

Wayne McCabe; Fred B. Thompson;  
Joseph McFadden; E. Holcomb;  
Ms. Ann Shepard,

Defendants.

Case No. 8:12-cv-02142-RBH-JDA

**REPORT AND RECOMMENDATION**  
**OF MAGISTRATE JUDGE**

This matter is before the Court on a motion to dismiss without prejudice filed by Plaintiff.<sup>1</sup> [Doc. 53.] Plaintiff is proceeding pro se and brings this civil rights action pursuant to 42 U.S.C. § 1983. [Doc. 1.] Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under 42 U.S.C. § 1983 and to submit findings and recommendations to the District Court.

**DISCUSSION**

On March 6, 2013, Plaintiff filed a motion to dismiss the Complaint without prejudice to have an opportunity to fully exhaust his state remedies. [Doc. 53.] On March 18, 2013, Defendants filed a response in support of Plaintiff's motion, indicating Defendants consent to a dismissal without prejudice. [Doc. 54.]

Under the Federal Rules of Civil Procedure, a plaintiff may request the court to dismiss his action. Fed. R. Civ. P. 41(a)(2). The court may dismiss the action "on terms

---

<sup>1</sup>Also pending before the Court is a motion for summary judgment filed by Defendants. [Doc. 50.]

that the court considers proper.” *Id.* Unless the court orders otherwise, dismissal of an action at the plaintiff’s request is without prejudice. *Id.* Here, because Defendants have consented to the dismissal of this action, the Court recommends Plaintiff’s motion be granted.

### **CONCLUSION**

Wherefore, based upon the foregoing, the Court recommends Plaintiff’s motion to dismiss [Doc. 53] be GRANTED, Defendants’ motion for summary judgment [Doc. 50] be FOUND AS MOOT, and the Complaint be dismissed without prejudice.

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin  
United States Magistrate Judge

March 19, 2013  
Greenville, South Carolina